



SUBMISSION TO THE SENATE STANDING COMMITTEES ON EDUCATION AND EMPLOYMENT
EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

FAIR WORK AMENDMENT (RESPECT FOR EMERGENCY SERVICES VOLUNTEERS) BILL 2016

VICTORIAN TRADES HALL COUNCIL SUBMISSION

SEPTEMBER 2016

The Victorian Trades Hall Council (“VTHC”) submits that the Committee should recommend that the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 (“the Bill”) be rejected. The Bill is flawed and the rushed nature of its proposed implementation is of deep concern.

POLITICS ABOVE POLICY

1. The Bill has not been the subject of a rigorous policy development process. It is the result of a confected political intrigue, aimed at damaging the Victorian State Labor Government and aiding the re-election of the Turnbull Government. This cynical use of emergency services for electoral purposes does not represent a suitable platform upon which to build policy.
2. Industrial relations is too important to the workers and businesses of Australia to have a Government making ad-hoc changes whenever it wishes to insert itself into a dispute.
3. The Federal Government should devote its attention to resolving its own industrial dispute with Commonwealth public servants instead of inserting itself in the affairs of the State of Victoria.
4. There is a very real risk that the hurried drafting of the Bill, which is effectively designed to interfere with a particular industrial dispute, will end up having wider industrial relations ramifications.

THE BILL DISCRIMINATES AGAINST EMERGENCY SERVICE WORKERS AND ADDS BARRIERS TO COLLECTIVE BARGAINING

5. Collective bargaining agreements are instruments negotiated between employers and employees. In no other industry or sector, are they subject to third party intervention in the same manner that the Bill seeks to create.
6. Emergency services workers already face limits to their ability to fully enjoy the same rights that other workers are endowed in the Fair Work Act 2009 (“the Act”). Limitations are already placed upon them, creating a greater need for strong provisions relating to consultation about all matters pertaining to the employment relationship. An effect of the Bill would be to remove existing rights to consult with employers about a wide scope of issues, leaving employees with no recourse to amicably resolve matters in the workplace. This is patently unfair and a recipe for further industrial strife.

THE BILL’S SCOPE IS VAGUE AND GIVE RISE TO UNCERTAINTY

7. The Bill relies heavily upon regulations to determine its application. In an attempt to disguise the fact that Government’s focus is the CFA, the Bill has been drafted in such a way appear to have a broader and more general intent. The dependence upon regulation to define its scope provides another layer of uncertainty, most unwelcome in industrial relations policy.
8. The Bill has the potential to have extremely wide reach. For example, the interaction between the Bill and (for example) hospital emergency departments and/or Community Emergency Response Teams is unclear. In its current form, the Bill may be used to further interfere with the collective bargaining process of several thousand employees in state health services. Due to the Bill’s political origins, such future political interference in the workplace rights and entitlements of Australian workers cannot be ruled out.
9. There is further uncertainty as to the meaning of objectionable emergency management terms and The Bill would no doubt, give rise to disputes about its proper definition. Consequently, it will be up to the Fair Work Commission to interpret the intent of the Parliament, without sufficient guidance within the legislation. Case precedents will be set that may unduly extend the definition of objectionable emergency management term (even beyond the politically driven goals of the current Government). This could lead to perverse outcomes that further discriminate against emergency services workers and undermine their collective bargaining rights.

THE BILL WILL COMPLICATE COLLECTIVE BARGAINING AND UNDERMINES THE ABILITY OF THE FAIR WORK COMMISSION TO EXECUTE ITS FUNCTIONS

10. The Bill sets a threshold for third party intervention to those matters that “could affect” volunteers. There is great uncertainty about whether matters “could” affect volunteers, allowing volunteer bodies to intervene in a wide range of bargaining related proceedings at the Fair Work Commission. Such uncertainty will complicate collective bargaining and tie up the resources of the Fair Work Commission.
11. The Bill creates a statutory right for volunteer bodies to make submissions on matters that may arise during the course of bargaining. This would include, unprecedented access to intervene in proceedings, a right not even afforded to State and Federal ministers.
12. While providing volunteer bodies extraordinary new rights, the Bill does nothing to regulate the behaviour of these bodies during bargaining matters. They would not be required to adhere to the Good Faith Bargaining Requirements – particularly s.228(1)e of the Act, preventing representatives behaving in a capricious or unfair manner that undermines collective bargaining. Volunteer bodies would also not be covered by s.345 of the Act providing penalties for making of misrepresentations about the workplace rights of others. Simply put, the Bill provides volunteer bodies with extraordinary new rights without imposing the same responsibilities to be bona fide actors.
13. The loose drafting of the Bill may result in a plethora of volunteer organisations, each with the right to make (potentially conflicting) submissions on the same matter. In the CFA example, it would be expected that Volunteer Fire Brigades Victoria (‘VFBV’) would be the sole body provided the opportunity to intervene. However a result of the Bill may be the fracturing of the VFBV and the emergence of several new bodies based on geographical, operational or even political differences. Such a result would entrench an unwieldy and costly barrier for all parties to the resolution of bargaining disputes.

CONCLUSION

14. The Bill creates more potential problems than the Government contends it will resolve. This is due in large part, to the nakedly political nature of the Bill which does nothing to respect, honour or value either volunteers or the emergency service workers who are there for us when we need them most.
15. The Bill was not subjected to a rigorous policy development process. It was born of confected outrage, misinformation and cynical electioneering. As such, it is unworthy of the Senate’s approval.
16. The VTHC submits that the Senate Committee should recommend that the Senate reject the Bill.

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